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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

5 20 CR 188 (JSR)

6 Telephone Conference

7 RUBEN WEIGAND,

8 Defendant.

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9 New York, N.Y.

10 March 17, 2020

11 3:30 p.m.

12 Before:

13 HON. JED S. RAKOFF,

14 District Judge

15 APPEARANCES

16 GEOFFREY S. BERMAN

17 United States Attorney for the
18 Southern District of New York

19 CHRISTOPHER DiMASE

TARA LaMORTE

NICHOLAS FOLLY

Assistant United States Attorneys

20 MICHAEL H. ARTAN

21 Attorney for Defendant

22 ALSO PRESENT:

23 LA AUSA Solomon Kim

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(In chambers)

THE COURT: This is Judge Rakoff.

I'm going to put you on the speakerphone.

We have a court reporter here.

Will the parties please state your names for the record.

MR. DIMASE: Good morning, your Honor.

For the government, Christopher DiMase.

I'm also joined by AUSA Nicholas Folly and AUSA Tara La Morte.

Also, the court, if the court would permit, we have the AUSA from Los Angeles who handled the hearings last week, Solomon Kim.

He is also on the line to address any questions that may arise because we were not able to get the transcripts in advance of today's proceeding.

THE COURT: All right.

For the defense.

MR. ARTAN: Good afternoon, your Honor.

Michael Artan for Mr. Weigand.

I have a question for the court before we proceed.

I think someone said yesterday I should not use a speaker, but my client's fiance is present in my office, and I'm inquiring whether I could stay on the speaker or not.

I certainly would accede to whatever the court

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1 desires.

2 THE COURT: Well, you could stay on the speaker.

3 Here is the difficulty.

4 Just keep this in mind.

5 When you're on the speakerphone and I try to interrupt
6 you for a question or something like that, you can't hear me.

7 That's the trouble with speakerphones.

8 So if you will just be sure that when you're speaking
9 on the speakerphone, you pause every minute or so to make sure
10 that I don't have some question for you, then it's fine.

11 MR. ARTAN: Thank you, your Honor.

12 If it poses a difficulty, I know you'll let me know,
13 and I appreciate the courtesy.

14 I believe there is someone on from pretrial services
15 as well.

16 MS. DEFEO: Courtney DeFeo, C-o-u-r-t-n-e-y D-e F-e-o.

17 THE COURT: Thank you.

18 All right.

19 Just to set the table here, this bail hearing
20 originates from a call I received yesterday where I was
21 informed by counsel for both sides that the defendant had been
22 arrested in California, that he had been taken before a
23 magistrate judge who, after receiving the pretrial services
24 report there, which I have a copy of, initially set bail
25 conditions that would authorize the defendant's release.

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1 However, he stayed that order at the request of the
2 U.S. Attorney's office in New York, who wanted to appeal that
3 determination to me.

4 Independent of that, I think, as I understood it at
5 least as of yesterday, one of the bail conditions, namely the
6 posting of a substantial bond by a third party, had not been
7 met.

8 We considered whether it was possible to get the
9 defendant here today, but aside from all the obvious problems,
10 the coronavirus problems would have made it just impossible.

11 We are going ahead without the presence of the
12 defendant, but let me ask defense counsel, you indicated
13 yesterday that you might have an opportunity to speak with him
14 before our telephone conference today.

15 I don't know if you did that or not?

16 MR. ARTAN: Your Honor, after we were on the phone, I
17 went to go see my client, and he has agreed to waive his
18 presence for today's hearing.

19 THE COURT: All right.

20 Excellent.

21 OK.

22 Let me hear first from the government and then from
23 defense counsel and then from anyone else who wants to be
24 heard.

25 MR. DIMASE: Judge, just one point of clarification.

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1 You mentioned having a pretrial services report from
2 California.

3 Based on my conversations with AUSA Kim, I believe
4 there may be two reports.

5 I just want to make sure that you have those.

6 LAW CLERK: I just gave you the updated one.

7 I can print out the original one.

8 THE COURT: I've only read the updated one.

9 I'm told there was an earlier one, but I'll take a
10 look if you want.

11 I don't see any reason to take a look at it.

12 This was the updated.

13 the one I read was the later report.

14 MR. DIMASE: Understood.

15 OK.

16 I take it, maybe the AUSA can clarify this, that the
17 updated report contains all the information that was contained
18 in the original report?

19 THE COURT: Well, you know, with apologies to anyone
20 who cares, I assume counsel is going to tell me every relevant
21 fact that I need to know right now.

22 MR. DIMASE: Fair enough.

23 I don't mind doing that, your Honor.

24 I want to make sure that you had all the appropriate
25 information.

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1 With that, typically the government is appealing the
2 decision before the magistrate judge who sets bail conditions,
3 and I shared those with the court yesterday, but in sum, those
4 conditions include a \$500,000 bond to be fully secured by
5 equity and real estate owned by a particular person; GPS
6 location monitoring; surrender the defendant's passport; and
7 travel restricted to the Los Angeles area and to the Southern
8 District of New York.

9 We don't believe that those conditions, or frankly any
10 set of conditions, can reasonably assure Mr. Weigand's
11 attendance in court and we are, therefore, seeking detention.

12 I would note at the outset that there was a particular
13 person identified as the surety in the CDCA proceedings.

14 We have been notified by that person, who was prepared
15 at the time to secure the bond with equity and real estate that
16 he owned, that he is no longer prepared to service --

17 THE COURT: No, I don't think that is especially
18 relevant.

19 I indicated that as much yesterday when defense
20 counsel wanted to have this hearing later, because he wanted to
21 see if he could find someone else who was suitable.

22 If the present conditions are suitable to the court
23 but someone else has to be found, obviously the guy won't be
24 released until someone else is found.

25 But I don't think that is the heart of the matter.

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1 I thought the government was of the view that no set
2 of conditions could assure the risk of flight, assure against
3 the risk of flight, even if the bond was \$10 million or two
4 cents.

5 MR. DIMASE: That is our argument, your Honor.

6 THE COURT: Well, I would like to hear that argument
7 then and enough of these preliminaries.

8 MR. DIMASE: So, your Honor, first of all, as you have
9 seen in the pretrial services report, after reviewing the
10 information, they recommend detention.

11 The reason for that are many of the same reasons the
12 government seeks detention.

13 First of all, the defendant is a German citizen.

14 He has no citizenship or other status here in the
15 United States.

16 That is particularly problematic because, as the court
17 may be aware, Germany will not extradite its citizens to the
18 United States for prosecution on criminal charges.

19 To the extent that the defendant is able to leave the
20 United States and return to Germany, he cannot be brought back
21 to be prosecuted on the charge in the indictment.

22 Moreover, he has no ties to the United States.

23 He has no family here in the United States, no
24 property that the government is aware of, no employment here,
25 quite infrequent travel here.

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1 In point of fact, on this trip -- I'll just go back to
2 how this arrest developed -- Mr. Weigand was flying from
3 Zurich, Switzerland, to San Jose, Costa Rica, and he had a
4 stopover at Los Angeles International Airport in California.

5 And it was at the Los Angeles airport he was arrested
6 by agents on the arrest warrant associated with the indictment.

7 Even on this trip, Mr. Weigand was not intending to
8 stay or spend any significant time.

9 In fact, I believe his flight was scheduled to leave
10 five hours after -- his flight out to Costa Rica was scheduled
11 to leave five hours after his flight from Zurich arrived.

12 In sum, defendant is a foreign citizen to a country
13 that won't extradite.

14 Has no ties really here to the United States.

15 Secondly, it is clear from the allegations in the
16 indictment that this is somebody who is connected to a criminal
17 network with access to substantial financial resources.

18 As the court is no doubt aware from reading the
19 indictment, the charged scheme is a bank fraud scheme involving
20 the processing of over \$100 million using phony corporations
21 and offshore bank accounts.

22 In fact, I'll get to this a little later when I
23 discuss the penalties that the defendant faces, but that is
24 likely a significant underestimate of the actual amount of
25 money handled by this organization, because it only accounts

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1 for one of the significant credit card companies that was
2 involved in the scheme.

3 We have not obtained records from the other of the two
4 largest credit card players.

5 It could easily be twice that amount, if not more.

6 So I think it also bears note that the government is
7 aware that at least one player in the scheme was earning as
8 much as 8.5 percent of the transactions.

9 So we're talking about, first of all, a very large
10 figure in terms of the money that was flowing through accounts
11 that the defendant and his coconspirators controlled, and then
12 fees that are a substantial portion of that amount of money.

13 So we're talking about a group of people that have
14 access, I think it is fair to say, to substantial resources,
15 many of which may be offshore.

16 Turning to the evidence against this defendant, the
17 evidence is strong.

18 The government has detailed text message conversations
19 involving the defendant in which he and his coconspirators
20 discussed this scheme that is charged in the indictment, which
21 I'll call the miscoding scheme for lack of a better word.

22 We also have anticipated testimony from a
23 coconspirator witness, among other things, placing the
24 defendant in one or more meetings related to the criminal
25 scheme.

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1 We have developed evidence that the defendant and his
2 coconspirators used encrypted services, encrypted chat
3 messages, such as Telegram, and e-mail, such as ProtonMail, to
4 avoid law enforcement detection, and also used anonymous e-mail
5 addresses, nicknames, and unsigned e-mails, among other things,
6 to avoid law enforcement detection.

7 So this case is strong against the defendant.

8 turning to the charge, the charge is serious.

9 This is a charge that carries a 30-year statutory
10 maximum.

11 It is a scheme, as I noted before, that involves at
12 least \$100 million, but likely much more than that.

13 The guidelines, I understand, were discussed at some
14 length in the California proceedings, I think, at a minimum, it
15 is fair to say somewhere in the ballpark of 70 to 87 months,
16 and I can tell the court how I'm arriving at that.

17 I think there is an argument that the entire \$100
18 million, the government is aware of today, could constitute
19 loss under the guidelines.

20 Under that scenario, the range is much higher, at 135
21 to 168 months, based on \$100 million loss.

22 But even if it were to take a more conservative
23 approach and really base the loss on gain, because the loss is
24 not easily calculable under the guidelines, I think using the
25 8.5 percent number as a proxy for the amount earned here, that

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1 is in the ballpark of eight and a half million, that gets you
2 to an offense level of 27 and a resulting guidelines range of
3 70 to 87 months.

4 So that is a substantial sentence, especially in a
5 white collar case, and it could be much higher than that.

6 The bottom line is, between the strength of the
7 evidence against the defendant and the seriousness of the
8 charge, along with the consequences it carries, there are
9 strong defenses for this defendant who has no ties here, who is
10 a German citizen, and were he to return to Germany, could avoid
11 ever being prosecuted here in the United States, flee back to
12 that country or elsewhere in the world.

13 There is one other point I want to bring to the
14 court's attention in connection with this bail proceeding,
15 which is the post-arrest statement made by Mr. Weigand, which
16 I think goes a little bit to his likelihood of complying with
17 bail conditions in terms of, you know, his basically coming to
18 terms with the charges against him and his willingness to be
19 honest with law enforcement.

20 So he told the agents during his post-arrest statement
21 that he did not have any involvement with a company that is
22 listed in the indictment as the marijuana -- I'm not sure, I'm
23 forgetting the precise definition -- the company to which
24 Mr. Weigand's coconspirators provided the services.

25 Mr. Weigand denied any involvement with that company,

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1 but the evidence shows that he was heavily involved in the
2 scheme and that he knew full well that he and his coconspirator
3 handling marijuana transaction proceeds through that company,
4 including text messages, chat messages, and other evidence of
5 that nature where Mr. Weigand is discussing the scheme.

6 In addition, Mr. Weigand was questioned about an
7 e-mail address that the government has connected both to him
8 and to the scheme.

9 Again, he, when questioned about that e-mail address,
10 he denied being connected to it or using it and, in fact, the
11 evidence shows that not only was that his e-mail address, but
12 that he was using it in furtherance of the charged scheme.

13 So to add to everything else, this is a person who
14 has, in the context of a post-arrest statement, when agents
15 spoke to him after his arrest at the airport, lied and denied
16 any involvement in the charged offense.

17 So for all those reasons, your Honor, I think
18 primarily based on the lack of any ties here, the German
19 citizenship, the extradition problem, combined with the
20 strength of the evidence, the seriousness of the charge, and
21 the financial resources that Mr. Weigand has to flee, we
22 believe he presents a very, very serious risk of flight that
23 cannot be mitigated with any set of bail conditions at all, and
24 that he should be, therefore, detained.

25 THE COURT: All right.

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1 Let me hear from defense counsel.

2 MR. ARTAN: Thank you, your Honor.

3 To begin, just to get one point out of the way, the
4 defense would like to emphasize the fact that there is no risk
5 to the community because the indictment in paragraph six
6 acknowledges that whatever has been alleged stopped in 2019.

7 So I would just like to put that little point to rest
8 before getting to the issue of flight risk.

9 The government and defense has a hugely different
10 point of view with respect to the loss amount in this case, and
11 I think it is important to talk about what the alleged scheme
12 is and, of course, my client is not acceding to any
13 involvement, but the alleged scheme is basically marijuana
14 dispensaries here in California and Oregon, which are legal
15 operations according to state law.

16 And I, of course, acknowledge the fact that state law
17 and federal law are at odds in that regard, but in the state of
18 California and the state of Oregon, the dispensaries were
19 operating legally.

20 There was a company Eaze, which is not named in the
21 indictment, but that is what is being discussed here was the
22 subject of civil litigation last year, was sort of an Uber,
23 if you will, type company which was delivering marijuana to
24 customers in California and Oregon.

25 The customers, up until last year, were using credit

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1 cards to pay for the marijuana deliveries.

2 The company Eaze, which I believe is the company that
3 Mr. DiMase was talking about --

4 MR. DIMASE: That's correct.

5 MR. ARTAN: -- was then processing --

6 I'm sorry?

7 MR. DIMASE: I just said that that was correct.

8 MR. ARTAN: That company --

9 Could you repeat that, please?

10 MR. DIMASE: I'm sorry.

11 I just was saying --

12 MR. ARTAN: In any event --

13 MR. DIMASE: -- you're correct, that is the company,
14 Eaze, that we were discussing.

15 MR. ARTAN: OK.

16 So Eaze then was dealing with e-commerce facilities to
17 process the credit cards.

18 The credit cards would be processed, and full payment
19 was made to the dispensaries.

20 So when the government is talking about a loss, there
21 was no loss to anyone.

22 The financial institutions were all made fully whole,
23 the purchasers of the marijuana basically paid for their
24 marijuana, and the dispensaries received their money.

25 To suggest that there is a \$100 million loss in this

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1 case is completely at odds with what the structure alleged by
2 the government constituted.

3 The fact is that the government's case is based on a
4 technical interpretation of Section 1344(2), which talks about
5 getting money under some false pretense, but the fact is there
6 a no loss and no intended loss in this case.

7 So the defense would like to emphasize the fact that
8 although there might be some technical argument of a bank
9 fraud -- again, I am not conceding that -- but if there is a
10 technical argument as to bank fraud, we have a case where there
11 is no loss and no intended loss.

12 If you had a no-loss bank fraud case, which is our
13 view of what this is, and it is also the way the indictment is
14 laid out.

15 You're not talking about 70 to 87 months, you're
16 talking about a sentence of less than a year.

17 I would also like to emphasize the fact that
18 throughout this indictment, it does not say anywhere what
19 Mr. Weigand is accused of doing.

20 Throughout the indictment, it says he and his
21 conspirators, he and his conspirators did X, Y, and Z.

22 There is not a single instance in the indictment which
23 identifies what conduct he is supposedly to have done.

24 This is of great concern because the government speaks
25 in broad terms about a criminal network and so on, and the fact

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1 is that his involvement, alleged involvement, could have been
2 as small as making an introduction and he could be tied up in
3 this situation, and the Court has no way of knowing what it is
4 he is supposed to have done.

5 My client has been in the e-commerce industry for a
6 good number of years.

7 In fact, I won't say the entire period of e-commerce,
8 but for an extended time.

9 He is deeply respected in Europe.

10 He is a very successful e-commerce consultant.

11 It is a legitimate company, it is a series of
12 legitimate companies, and I would emphasize the fact that he
13 has no criminal record.

14 He has no history of any criminal conduct.

15 The e-commerce world is complicated, your Honor, and
16 the fact is that you have, even under any circumstance, when
17 you're talking about e-commerce, these same types of accounts
18 and same types of setups would be used whether they were
19 selling marijuana or selling widgets or selling on eBay.

20 The fact is that that is consistent with how
21 e-commerce exists and operates.

22 I think there is a temptation to get too far -- at
23 least to get caught up in the idea that all this money was
24 going through the accounts, but it all came back to where it
25 was supposed to go.

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1 Additionally, your Honor, I would like to point out
2 that insofar as the post-arrest statements, I talked to my
3 client about them.

4 He was asked if he had involvement with Eaze and he
5 does not have involvement with Eaze.

6 Eaze, even if you believe the government's view of
7 what happened, Eaze would have been way down the road and it
8 would have been a situation where if my client was involved, he
9 would have been involved with parties other than Eaze.

10 Insofar as this e-mail address is concerned, he still
11 denies that it is his e-mail.

12 He wasn't asked if he ever used it, he was asked if it
13 was his e-mail.

14 I would suggest to the court that someone who is a
15 successful European businessman -- and I haven't heard any
16 doubt about that -- would actually put himself in a position of
17 hiding out in Germany the rest of his life over what would
18 appear, from the defense perspective, of being a no-loss bank
19 fraud case.

20 As to ties here in Los Angeles, my client has ties
21 here.

22 He has friends here that he's known for a long time.

23 One person was willing to be a surety, and as I told
24 the court yesterday and as Mr. DiMase has reiterated today, he
25 has chosen not to continue in that circumstance.

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1 But the fact is my client does have ties here, he is
2 able to live here or in New York, where he also has friends,
3 and the picture as a total is important for the court to
4 understand.

5 He is a successful businessman with an unidentified
6 role in a no-loss bank fraud case, your Honor.

7 I think understanding that, the magistrate judge
8 appropriately granted a bond of \$500,000 secured by property,
9 my client has already provided -- the passport was already
10 turned over to pretrial services here in Los Angeles, the FBI
11 had it and gave it to the pretrial services office, and so that
12 has already occurred, and the Court also required location
13 monitoring, GPS monitoring.

14 The defense would suggest that, taken in combination,
15 the factors and terms and conditions of bond set forth by the
16 magistrate judge here in Los Angeles more than adequately
17 assure the government of Mr. Weigand's appearance in court and
18 that the magistrate judge made an appropriate decision.

19 Insofar as the pretrial services' recommendation is
20 concerned, the pretrial services' original recommendation, your
21 Honor, was that my client be released on a \$100,000 unsecured
22 bond with \$50,000 cash deposit.

23 That was the report issued last Tuesday.

24 On Friday, when the court actually made its finding,
25 the pretrial services agency recommended detention based on the

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1 government's statement to them that there was \$100 million
2 loss.

3 I would suggest to the court that the pretrial
4 services' original position should also be recognized, because
5 this is not a \$100 million loss case and there was no loss and
6 no intended loss.

7 Obviously, if the court has any questions -- I'm
8 sorry.

9 THE COURT: No, but let me hear --

10 MR. ARTAN: I forgot to add one thing to your Honor.

11 I apologize.

12 The government has mentioned encrypted messages and so
13 on.

14 And the fact is, your Honor, that almost every
15 industry I'm aware of that involves either the transmission of
16 financial information or involves the transmission of
17 confidential communication, even medical records and legal
18 communication involves encrypted messaging.

19 Virtually every big law firm I deal with and whatever
20 healthcare providers I represent, everything is encrypted.

21 So to suggest that the fact of the messages being
22 encrypted is nefarious, I think is a bit misleading.

23 Thank you for that, your Honor.

24 THE COURT: Thank you.

25 Let me hear briefly from the government in rebuttal.

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1 MR. DIMASE: Thank you, your Honor.

2 For one thing, I think very little was said about U.S.
3 ties.

4 It is very unclear to me, other than "friends," that
5 Mr. Weigand has any real ties to the U.S. or any specifics on
6 that.

7 Nor were the issues of the inability to extradite him
8 from Germany or his profits really addressed, but let me
9 address the two things that were brought up at some length;
10 one, the evidence and what Mr. Weigand's scheme was, and two,
11 the loss issue.

12 On his role, I think Mr. Artan said something like
13 this was, at best, a technical violation.

14 The scheme involved regular lies to banks in order to
15 force them or permit them to transactions they would never have
16 transacted otherwise.

17 The scheme is complex, but actually it is not, as
18 Mr. Artan suggests, complicated.

19 Mr. Weigand and his coconspirators were responsible --
20 and Mr. Weigand, in particular, was responsible for helping
21 create fake companies that looked like real merchants and then
22 submitting application packs, they are called, which contained
23 all the information about the fake merchant, what they do, what
24 their line of business is, their expected revenue, things of
25 that nature to a bank, and then setting up an account in the

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1 name of that fake merchant so that the credit card companies
2 will think that customers, when they are buying marijuana, are
3 actually buying, let's just say, golf balls.

4 So golfballs.com is a merchant.

5 Mr. Weigand is involved in putting together
6 application packs and submitting them to banks with fake
7 companies listed in them in order to allow these transactions
8 to be processed.

9 Visa, Mastercard, U.S. banks, none of them would
10 handle this traffic otherwise.

11 So it is not a complicated scheme and it is not a
12 technical bank fraud violation.

13 It is a series of regular lies to banks to get them to
14 move money that they absolutely would not otherwise.

15 Mr. Weigand's involvement included submitting
16 application packs.

17 He also had direct relationships with so-called
18 acquiring banks, the banks where the merchants had their
19 accounts to receive these funds, to help this company, Eaze,
20 process that marijuana traffic and move the money through the
21 financial system.

22 There is evidence that he attended a meeting in
23 California with coconspirators to map out how they would
24 operate this scheme, and it is clear from the electronic
25 messages that he knew that this was marijuana traffic going

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1 through e-merchants and the banks, that he knew the real
2 customer was Eaze, and that the companies were phony, and even
3 discussed the submission of these application packs to banks to
4 facilitate the scheme.

5 Let me turn now to loss.

6 With respect to loss, there is a loss here.

7 Whether it is \$100 million, which is the government's
8 position, or not, one way or the other, there was exposure to
9 banks and credit card companies to legal risk and reputational
10 harm, at a minimum.

11 As I said, the banks and credit card companies simply
12 would not have processed this money.

13 It isn't really fair to say the money went all where
14 it was supposed to go.

15 Large chunks of this money went to the criminal actors
16 responsible for facilitating the lies to banks.

17 At the end of the day, the dispensaries got paid,
18 that's true, but a big percentage was lopped off to facilitate
19 these lies to make sure the transactions went through.

20 So even if it is not 100 million -- as I already said
21 100 million really underestimates the amount, it is only from
22 one of the major credit card companies -- the guidelines
23 direct, under application note Section 2B1.1, application note
24 3(b), that the court says that the gain resulted from the
25 offense, as an alternate measure of loss, only if there is a

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1 loss that recently cannot be determined.

2 As I said, there was clearly a loss here.

3 Whether it is 100 million or some other amount, that
4 is difficult to calculate.

5 For that reason, at a minimum, the court would
6 calculate the gain, which is a substantial percentage of this
7 100 million or much more that passed through these phony
8 merchant accounts.

9 So the government just does not agree at all with this
10 theory that there is simply no loss in this case and that the
11 guidelines are as low as Mr. Artan suggests.

12 THE COURT: All right.

13 Unless anyone else has anything to say, I'm prepared
14 to rule.

15 MR. ALEINIKOFF: If the court would indulge a brief
16 rebuttal, I would appreciate that.

17 THE COURT: Absolutely.

18 MR. ARTAN: Insofar as Mr. Weigand's role is
19 concerned, we hardly dispute the way it's been expressed by the
20 government.

21 Again, the indictment itself is incredibly vague and
22 these broad statements, I think, should be limited in terms of
23 the emphasis the court adopts.

24 Insofar as the ties are concerned, your Honor, there
25 is no question that my client doesn't have family here.

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1 He is not a resident here.

2 This isn't a standard situation of ties, but the fact
3 is that he is an extremely successful businessperson, and
4 people who are in his position certainly don't want to be
5 restricted to one country for the rest of their lives with the
6 idea that a defensible case is out there.

7 I don't want to belabor the loss situation too much,
8 your Honor.

9 But when the government says that the banks would not
10 have done this without the miscoding, the fact is, your Honor,
11 the banks made substantial money on every one of these credit
12 card transactions.

13 The banks made money.

14 So to suggest that there was a loss to the bank is
15 simply fanciful.

16 Every credit card transaction involved a bank fee
17 where they made money.

18 Now, the fact that they might not have done it doesn't
19 alter the fact that the banks got -- if the volume is what the
20 government says, the banks made millions and millions of
21 dollars even though they were "defrauded."

22 It is an odd-ball situation, your Honor.

23 And if federal law was consistent with California
24 Oregon law, I guess we would be in a different posture right
25 now, but this is where we are, and I would suggest to the court

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1 that the magistrate judge in California was correct in his
2 ruling.

3 THE COURT: All right.

4 Thank you very much.

5 I think the very fine presentation by both sides in
6 one respect seems to me to be a little misfocused, and that is
7 by the emphasis on loss or no loss and the concomitant emphasis
8 on how that affects the guidelines.

9 To begin with, loss is not an element of this crime.

10 The essence of bank fraud, like the mail fraud statute
11 for which it is derived which goes back to 1872, is that you
12 lied to someone from whom you were seeking to get money or
13 property or the like.

14 You put them at risk because if they had known the
15 truth, they might or might not have gone along with what you
16 were proposing.

17 But under federal law, and really under the common law
18 of England as well, you had to tell them the truth.

19 The gist of the indictment, as I read it, is that the
20 grand jury determined that there was probable cause to believe
21 that this defendant and his confederates repeatedly lied to the
22 banks in substantial transactions and multiple transactions and
23 thereby put them, at a minimum, at the risk of entering into a
24 transaction that they believed was different from what it
25 actually was.

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1 That is the heart of federal fraud statutes.

2 I have, in numerous written decisions as well as oral
3 statements made at sentencing, pointed out how misguided the
4 guidelines are in their inornate attention to loss when it is
5 not even an element of the crime.

6 To be frank, I think the guidelines in this respect
7 are totally irrational, and whether it is \$100 million or no
8 loss is not irrelevant, but it is not, in my view, central to
9 the inquiry.

10 I have sentenced people to well below the guidelines
11 when the guidelines were simply a figure based largely on loss,
12 and I've sentenced people to above the guidelines when I
13 thought that other factors showed that they were substantial
14 crooks.

15 While I appreciate all the arguments from both sides
16 on the loss issue and the concomitant guideline issue, I think
17 it is somewhat besides the point, or at least not totally
18 besides the point, but not central to the inquiry.

19 What I think is central to the inquiry is, first, the
20 seeming strength of the government's case.

21 Now, I say seeming because I always hold open, in any
22 bail situation, reconsidering the matter if I find reason to
23 believe that the government has materially overstated the
24 strength of its case.

25 But given the nature of the transactions here and the

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1 nature of the charge, it sounds like a strong case, well
2 supported.

3 The most important factor, though, as I'm sure both
4 counsel recognize, is the utter lack of ties that this
5 defendant has with the United States of any meaningful sort,
6 coupled with the extradition bar from Germany, coupled with the
7 obvious motive to flee that anyone would have who knew that
8 they were facing a serious felony charge, regardless of what
9 the sentence might turn out to be if convicted.

10 I was a little surprised to hear defense counsel say
11 that, Oh, no respected businessman would want to spend his time
12 cooped up in a country that couldn't extradite him.

13 One thinks of Marc Rich, who spent, what, 30 years in
14 Switzerland because Switzerland wouldn't extradite him, even
15 though he was an American citizen with substantial ties to the
16 United States.

17 One thinks more recently of Mr. Goshen and his flight
18 after all sorts of representations were made to the Japanese
19 authorities to get him released on bail.

20 But every case is different, and I don't mean to tar
21 this defendant with those cases.

22 My point is that this defendant has an obvious motive
23 to flee, has the wherewithal to flee, has a particularly strong
24 reason to flee in light of the no extradition situation, and
25 that coupled with all the other comments I've made convinces me

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1 that no set of conditions could reasonably assure that he is
2 not a substantial flight risk.

3 So I overrule the magistrate judge and Mr. Weigand
4 will be detained.

5 Now, we need to arrange to get him to New York.

6 We need to arrange for an arraignment, if he wishes
7 New York counsel, of course we need to get him an opportunity
8 to retain New York counsel.

9 Although I will be frank to say that I so far have
10 been very impressed by his California counsel, but that's the
11 defendant's decision to make.

12 On the other hand, we have the vicissitudes attendant
13 on the coronavirus situation.

14 My suggestion is that we put this down for arraignment
15 on April 28.

16 That is almost, what, five, six weeks from now.

17 That's much longer than I would do, but for the
18 coronavirus, I recognize that that presents substantial
19 problems.

20 I'm willing to do an earlier arraignment if defendant
21 wants, but assuming that he wants the time to retain counsel
22 and have counsel get up to speed and so forth, we would have
23 the arraignment in my court at 2:00 p.m. on April 28.

24 Is there anything counsel wants to raise with the
25 Court?

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1 MR. ARTAN: Your Honor, if, in fact, I can't say for
2 sure I might stay on the case, but we may also be getting
3 counsel in New York.

4 If, in fact, we were in a position to be arraigned
5 early and Mr. Weigand was obviously in your district, could we
6 advance the date, giving notice to the court, would that be
7 agreeable?

8 THE COURT: Absolutely.

9 I'm here.

10 Our court has not shut down, and all you need to do is
11 jointly call the court with your adversary and I'm usually
12 prepared to do an arraignment on 24-hour notice.

13 MR. ARTAN: Thank you, your Honor.

14 THE COURT: All right.

15 Anything else?

16 MR. DIMASE: Judge, just two quick points on the
17 timing of everything.

18 At the moment, Mr. Weigand has an identity hearing
19 scheduled in California for, I believe, next Tuesday or
20 Wednesday.

21 We would like to know whether it is on this call or
22 shortly thereafter whether he intends to continue to pursue
23 that hearing or not.

24 I think that may affect the timing of his removal to
25 New York.

K3HsWEIc

1 THE COURT: I'm not going to ask defense counsel to
2 add to that on this call because he would need to consult with
3 his client further given today's result.

4 I assume he will let you know promptly and well before
5 the day of the hearing.

6 MR. DIMASE: Very good.

7 I think what will need to happen is there will need to
8 be a further proceeding in California where, in light of this
9 court's detention order, that court orders Mr. Weigand removed
10 here to New York.

11 Perhaps the identity hearing can be adjudicated one
12 way or the other, also that is by consent or with adversarial
13 proceeding, and then following that hearing, assuming the
14 government succeeds, he would be ordered removed to New York.

15 THE COURT: Right.

16 MR. DIMASE: The second issue --

17 MR. ARTAN: May I butt in here?

18 MR. DIMASE: Sure.

19 MR. ARTAN: The court already set, the magistrate
20 court set Tuesday afternoon, March 24, for the identity hearing
21 and asked that we notify the government by Friday as to whether
22 we would be contesting identity so that the government could
23 avoid having a witness flown out.

24 So the matter is already on calendar for March 24.

25 THE COURT: That's fine.

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1 MR. ARTAN: I'm not sure that --

2 THE COURT: That schedule is fine.

3 You'll let the government know by Friday, and if the
4 answer is you want the hearing, the hearing will be held on
5 March 24.

6 That is fully consistent with the arraignment date
7 that I just set.

8 It still gives you plenty of time.

9 MR. DIMASE: I'm not asking the court to order this,
10 but to the extent that the counsel can provide a little bit
11 more notice on Friday, there are some pretty severe
12 restrictions in place for agent travel, which would require
13 some approvals to get the agents flown back to LA.

14 If there is any way you could let us know sooner than
15 Friday, we would greatly appreciate that.

16 MR. ARTAN: I'll do my best.

17 I'm going to try to see my client tomorrow and let you
18 know.

19 MR. DIMASE: Thank you.

20 The only other thing I would say, your Honor, is just
21 obviously the coronavirus presents somewhat of an unknown.

22 I did hear from the marshals today that there were
23 some delays in getting people produced from other districts.

24 I don't think that the court's schedule is
25 unreasonable.

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1 It still gives a significant amount of time to get the
2 defendant here, but I will let the court now if we foresee any
3 issues with that timeline in light of the unique events
4 unfolding right now.

5 THE COURT: That's fine, although it was precisely
6 because of that that I picked a date so far in the future.

7 My normal practice is to arraign a defendant the day
8 after he or she is indicted, not to give six weeks from the
9 time of a bail hearing.

10 Do your best, and obviously none of us can predict
11 exactly what will happen, so if there is a problem, of course
12 my practice, which the government I'm sure knows, but just for
13 defense counsel's benefit, don't ever send me a letter without
14 prior permission of the court.

15 If you have any kind of application whatsoever, just
16 get your adversary and call me and I will make myself available
17 and that way we can resolve any disputes very expeditiously.

18 I will, pursuant to Section 3161 of Title 18, exclude
19 all time between now and April 28, finding that such time is
20 necessary for the identification hearing, for the
21 transportation of the defendant, and also because, particularly
22 given the coronavirus, the best interest of justice in
23 excluding such time substantially outweighs the interest of the
24 public and the defendant in a speedy trial.

25 Anything else we need to take up?

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1 MR. DIMASE: Nothing from the government, your Honor.

2 Thank you.

3 MR. ARTAN: Nothing from the defense.

4 Thank you.

5 THE COURT: Thanks very much.

6 Bye-bye.

7 (Adjourned)

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